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11 AUGUST B. LANDIS

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re) No. 10-13676 AJ7
)
) Chapter 7
ANGELO P. ACCORNERO) Date: January 14, 2011
LORI E. ACCORNERO,) Time: 9:00 a.m.
) Place: 99 South E Street
Debtors.) Santa Rosa, California

**UNITED STATES TRUSTEE'S MOTION TO DISMISS CASE
FOR ABUSE UNDER 11 U.S.C. §§ 707(b)(1), (b)(2) and (b)(3)**

August B. Landis, the Acting United States Trustee for Region 17 (“UST”), hereby moves this Court for an order dismissing this case under 11 U.S.C. § 707(b)(1) because this case is presumptively abusive under 11 U.S.C. § 707(b)(2). In the alternative, the U.S. Trustee moves for dismissal under 11 U.S.C. § 707(b)(3), because the under totality of the debtors’ financial circumstances, this case is an “abuse” of chapter 7 because the debtors have the ability to repay creditors.

The presumption of abuse arises under Section 707(b)(2) primarily because Debtors excluded \$3115 in income derived from Mrs. Acconero's disability insurance benefits. With this additional income, Debtors have disposable income of \$2,193 per month on the means test, resulting in the presumption of abuse to arise. In a sixty month plan, disposable income of \$2,193 per month would generate total dividends of \$131,591, an amount more than sufficient to pay in full Debtors' unsecured debt of \$102,331. No special circumstances to rebut the presumption have been shown.

The U.S. Trustee further alleges, in the alternative, that dismissal is appropriate because the

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1 totality of the debtors' financial circumstances demonstrates abuse under Section 707(b)(3)(B).

2 This motion is based upon the Memorandum of Points and Authorities, the Declaration of
3 Donna Jensen, filed herewith, together with the entire record in this case and such evidence and
4 argument as may be introduced with respect to the Motion. Additionally, the UST requests the Court
5 take judicial notice under F.R.E. 201 of its own records in the case in support of the facts set forth
6 hereafter.

7 **I. FACTS**

8 1. Angelo P. Accornero and Lori E. Accornero ("the Debtors") filed a voluntary chapter 7
9 petition on September 23, 2010.

10 2. The initially scheduled 341 meeting was held on October 27, 2010. The UST timely filed
11 a 10-Day Statement of Presumed Abuse on November 8, 2010. This motion is therefore timely.

12 3. The Debtors are a couple with two children. Mr. Accornero is a police officer with the
13 City of Petaluma, whose monthly gross income is \$10,350. Mrs. Accornero is a retired police officer,
14 receiving disability retirement benefits in the monthly amount of \$3115. Mrs. Acconero also operates a
15 parties supplies business.

16 4. Debtors' means test (Official Form 22A), omitted the \$3115 in disability benefits as part
17 of their "Current Monthly Income."

18 5. Thus, under the Debtors' means test, Line 50, "Monthly disposable income" results in a
19 negative number, - \$921.81.

20 6. The U.S. Trustee disagrees with Debtors' numbers, asserting that the \$3115 should be
21 counted as current monthly income.

22 7. Including the \$3115 as current monthly income, with no other adjustments to Debtors'
23 means test, results in \$2,193 monthly disposable income.

24 8. The U.S. Trustee therefore asserts that the presumption arises under Section 707(b)(2).

25 9. The U.S. Trustee further asserts that there are no special circumstances in this case which
26 would rebut the presumption of abuse.

1 10. Under the totality of the circumstances, this case is an abuse of chapter 7.

2 11. Both Debtors have stable income and employment.

3 12. Debtors' petition, schedules, and statement of financial affairs, show a comfortable

4 lifestyle.

5 13. The Debtors' income and expenses, as reflected in Schedules I and J, show that the
6 Debtors have the ability to maintain a comfortable budget and repay some of their debt, with minor
7 adjustments, such as the following:

8 (A) Toys. Debtors have indicated an intent to keep paying monthly secured debt on several
9 recreational vehicles: 2005 Eclipse Attitude Travel Trailer (\$215); 2008 Kawasaki 4
10 wheel (\$132); 2007 Yamaha dirt bike (\$198), a total monthly amount of \$545.

11 (B) Recreation. Debtors' budget also includes expenses which, when added together, appear
12 to include substantial discretionary cushion. For example, Debtors listed under "Other
13 Expenditures" miscellaneous expenses in a monthly total amount of \$508, in addition to
14 recreation claimed in the amount of \$195 on Schedule J (Line 9).

15 (C) Telephone/Internet. In addition to claiming \$95 for telephone, the Debtors also claim an
16 additional \$180 per month for "internet/TV/house phone." The total of \$275 for this
17 category of expenses appear to be high.

18 (D) Deductions - Voluntary 457 plan - \$108. As a voluntary contribution to their own plan,
19 Debtors have the ability to cease these contributions while they repay creditors.

20 14. By adding \$108 to \$10,776 (Line 16 of Schedule I), the Debtor's monthly income would
21 be adjusted to \$10,884.

22 15. By eliminating luxury items on Schedule J ($\$545 + \frac{1}{2}$ of the total recreational amount –
23 \$350) would result in a reduction of \$895 in the monthly expenses, cutting the monthly expenses to
24 \$9801.

25 16. These very minor adjustments would result in disposable income as follows:

26 Adjusted income: \$10,884

27 Adjusted expenses: 9,801

1 Adjusted available funds: \$ 1,083

2 17. In a sixty month plan, \$1083 per month would result in total dividends of \$64,980, which
3 would constitute a 63% distribution to creditors based upon total unsecured debt of \$102,331.

4 18. A review of Debtors' expenses in the months preceding their bankruptcy filing also
5 shows that the Debtors were accustomed to having (or spending) a considerable amount of their budget
6 on recreational items.

7 19. A review of Debtors' credit card statements shows that in the six months before the filing,
8 Debtors took a number of vacations or trips to Las Vegas, campgrounds, and that they generally
9 expended relatively large sums on recreational expenses, amounts inconsistent with individuals who
10 were experiencing financial hardship. The following are examples of the type of expenses and the
11 recurring nature of recreational expenses observed on just one of Debtors' credit card statements:

12 Date	Expense	Amount
13 9/4/10	Willits KOA	\$ 139
14 9/27/10	Wine club	100
15 8/7/10	Maylons Brewing	145
16 7/24/10	Trinity KOA	202
17 7/31/10	New York New York Las Vegas	77
18 8/14/10	Clos Du Bois Winery	170
19 8/17/10	Comcast	337
20 4/22/10	Quality Inn - Mountainview	519
21 5/9/10	Wynn Las Vegas	540
22 3/20/10	Lions Gate	425
23 4/15/10	Quality Inn	519
24 3/21/10	New York New York Las Vegas	<u>351</u>
25 Total		\$3,524

26 20. The U.S. Trustee intends to conduct further discovery to ascertain the extent of Debtors'
27 pre-petition spending. The above list of expenses is provided for the sole purpose of showing that the
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Debtors were accustomed to spending a good portion of their income on discretionary items.

21. The existence of available discretionary income, coupled with Debtors' history of substantial recreational spending, show that the case may also be dismissed as an abuse under the totality of the Debtors' circumstances.

II. PRAYER FOR RELIEF

WHEREFORE, the United States Trustee respectfully requests

(I) entry of an order dismissing this case under Section 707(b)(1) as an abuse of chapter 7

on grounds that

(A) the case is a presumptively abusive under Section 707(b)(2) or,

(B) in the alternative, the totality of the circumstances of Debtor's financial

situation demonstrates abuse under Section 707(b)(3)(B); and

(II) any other and further relief as the Court deems appropriate.

Dated: December 8, 2010

Respectfully submitted,

August B. Landis
Acting United States Trustee

By: /s/ Donna S. Tamanaha
Donna S. Tamanaha
Assistant U.S. Trustee

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